

To: Skadowski, Suzanne[Skadowski.Suzanne@epa.gov]; Press[Press@epa.gov]
Cc: Holsman, Marianne[Holsman.Marianne@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Opalski, Dan[Opalski.Dan@epa.gov]
From: Abboud, Michael[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: Wed 7/31/2019 6:38:02 PM (UTC)
Subject: RE: MEDIA INQUIRY: EPA withdraws 2014 Pebble Mine Proposed Determination -- Crosscut, deadline COB

Will handle. Is the press release posted in R10's press room?

From: Skadowski, Suzanne <Skadowski.Suzanne@epa.gov>
Sent: Wednesday, July 31, 2019 2:36 PM
To: Press <Press@epa.gov>
Cc: Holsman, Marianne <Holsman.Marianne@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Opalski, Dan <Opalski.Dan@epa.gov>
Subject: MEDIA INQUIRY: EPA withdraws 2014 Pebble Mine Proposed Determination -- Crosscut, deadline COB

HQ – You're handling all inquiries, yes? Thanks.

Suzanne Skadowski
Public Affairs Specialist | Media Relations
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From: Weinberger, Hannah <hannah.weinberger@crosscut.com>
Sent: Wednesday, July 31, 2019 11:23 AM
To: Skadowski, Suzanne <Skadowski.Suzanne@epa.gov>; Press <Press@epa.gov>
Subject: Re: EPA withdraws 2014 Pebble Mine Clean Water Act 404(c) Proposed Determination

Hi, Suzanne and colleagues,

Thanks so much for sending this along. **I'm writing an article for which I have an End of Day deadline.** I'm wondering if:

1. Administrator Hladick would be willing to share what prompted him to retract his region's proposed determination, when that retraction wasn't mandated?
2. Would exercising 404(c) despite having another option (to have USACE and EPA headquarters take the reins of the situation, instead of leaving the issue to regional offices), leave the 404(c) powers vulnerable?
3. Is this accurate: In the memo from Leopold regarding the 404(q), it looks like there was a feeling that Region 10 didn't need to exercise its use of 404(c) when there may be other ways to align the interests of USACE and EPA, especially in a way that expedited the process (404(q))? Referencing:

"EPA has carefully considered the positions articulated in 2014 Proposed Determination and the 2017 and 2018 notices in light of the developments since they were published. First, the Corps' DEIS includes significant project-specific information that was not accounted for in the 2014 Proposed Determination and, based on that information, the Corps has reached preliminary conclusions that in certain respects conflict with preliminary conclusions in EPA's 2014 Proposed Determination. Second, there are other processes available now, including the 404(q) MOA process, for EPA to resolve any issues with the Corps as the record develops. EPA believes these processes should be exhausted prior to EPA deciding, based upon all information that has and will be further developed, to use its Section 404(c) authority. The issues relating to the development of the record

align with EPA's original, July 2017 rationale for withdrawing the 2014 Proposed Determination. For these reasons, Region 10 has now concluded that it is more appropriate to use well-established mechanisms to raise project-specific issues as the record develops during the permitting process and consider the full record before potential future. This document is a prepublication version, signed by EPA Region 10 Regional Administrator Chris Hladick on July 30, 2019. We have taken steps to ensure the accuracy of this version, but it is not the official version. 15 decision-making on this matter, instead of maintaining a Section 404(c) process that is now five years old and does not account for the voluminous information provided in the permitting process."

4. What role would Region 10 play in the Pebble Mine permit process regulation if the 404(q) process DOES elevate the matter to HQ? (I.e., who would end up exercising 404(c) authority if matters came to that: Region 10, or HQ?) Referencing:

"By initiating the 404(q) MOA process, EPA Region 10 is following an avenue to work with the Corps Alaska District throughout the permitting process to resolve concerns. If unresolved, EPA Region 10 can elevate to EPA Headquarters, which can decide whether to engage with the Department of the Army. If EPA proceeds through this process and its concerns remain outstanding when the Corps is ready to issue the permit, the MOA specifically contemplates that EPA will have an opportunity to consider exercising its Section 404(c) authority at that time. If EPA believes that these processes are not addressing its concerns, EPA retains the discretion and the authority to decide to use its Section 404(c) authority "whenever" it determines, in its discretion, that the statutory standard for exercising this authority has been met, including at the end of 404(q) MOA process, by This document is a prepublication version, signed by EPA Region 10 Regional Administrator Chris Hladick on July 30, 2019. We have taken steps to ensure the accuracy of this version, but it is not the official version. 24 initiating a new Section 404(c) process that is informed by the entirety of the facts and the Corps' decision-making known to the Agency at that time."

Hannah Weinberger | Science & Environment Staff Writer, Crosscut.com
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From: Skadowski, Suzanne <Skadowski.Suzanne@epa.gov>
Sent: Tuesday, July 30, 2019 11:20 AM
To: Skadowski, Suzanne
Cc: Skadowski, Suzanne
Subject: EPA withdraws 2014 Pebble Mine Clean Water Act 404(c) Proposed Determination

Good Morning:

Sharing today's news release from EPA's Headquarters office in Wash. DC. If you have any questions or need any more information about this announcement, please email press@epa.gov.

Link to a pre-publication notice of the withdrawal of the 2014 Pebble Mine Clean Water Act 404(c) Proposed Determination:
<https://www.epa.gov/bristolbay/notification-decision-withdraw-proposed-determination-restrict-use-area-disposal-site>

Link to EPA and Corps of Engineers letters regarding the Pebble Mine Clean Water Act 404(q) permit review process:
<https://www.epa.gov/bristolbay/epas-comments-us-army-corps-engineers-draft-section-404-permit>

Thank you,

Suzanne

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From: EPA Press Office <press@epa.gov>

Sent: Tuesday, July 30, 2019 1:53 PM

Subject: EPA Withdraws Outdated, Preemptive Proposed Determination to Restrict Use of the Pebble Deposit Area as a Disposal Site - Preview

EPA Withdraws Outdated, Preemptive Proposed Determination to Restrict Use of the Pebble Deposit Area as a Disposal Site

SEATTLE (July 30, 2019) - Today, U.S. Environmental Protection Agency (EPA) Region 10 Administrator Chris Hladick withdrew the 2014 Proposed Determination issued under section 404(c) of the Clean Water Act (CWA) for the use of the Pebble Deposit Area in Southwest Alaska as a disposal site associated with mining of the deposit.

“After today’s action EPA will focus on the permit review process for the Pebble Mine project,” **said Region 10 Administrator Chris Hladick**. “The agency has worked closely with the Army Corps to engage with stakeholders and the public on this issue, which has resulted in an expansive public record, including specific information about the proposed mining project that did not exist in 2014.”

By withdrawing the 2014 Proposed Determination, which was issued preemptively and is now outdated, the agency can continue its focus on fulfilling its responsibilities under the Clean Water Act to work with the Army Corps to review the permit.”

Today’s action does not approve Pebble’s permit application or determine a particular outcome in the Corps’ permitting process. Instead, it allows EPA to continue working with the Corps to review the current permit application and engage in the National Environmental Policy Act (NEPA) process.

“Region 10’s decision restores the proper process for 404(c) determinations, eliminating a preemptive veto of a hypothetical mine and focusing EPA’s environmental review on an actual project before the Agency,” **EPA General Counsel Matthew Z. Leopold**.

EPA Region 10 provided the Corps with detailed comments to its Draft Environmental Impact Statement (DEIS) and permit notice on July 1, 2019, and EPA looks forward to continuing its work with the Corps and the other cooperating agencies on the next steps in the permit review process.

Additional information: <https://www.epa.gov/bristolbay>.

Background

In July 2014, EPA Region 10 issued a Proposed Determination under CWA section 404(c) to restrict the use of the Pebble Deposit Area as a disposal site for dredged or fill material associated with mining the deposit. The Proposed Determination was based on three hypothetical scenarios for the mine site, each of which was different than the permit application submitted to the Corps for review in December 2017. Since 2014, there have been significant developments, including a lawsuit challenging the EPA’s process for developing the 2014 Proposed Determination and a related settlement, the permit application submitted by Pebble to the Corps, additional direction from the former EPA Administrator in January 2018, and a 1,400-page Draft Environmental Impact Statement (DEIS) and permit notice issued by the Corps.

In July 2017, EPA Region 10 published a proposal to withdraw the 2014 Proposed Determination. The notice opened a three-month-long public comment period, during which the EPA held two public hearings in the watershed area and consulted with federally recognized tribal governments and Alaska Native Claims Settlement Act Regional and Village Corporations with lands in the watershed. In December 2017, PLP submitted a CWA section 404 permit application to the Corps that proposes to develop a mine in the Pebble Deposit Area. The Corps then invited relevant federal and state agencies, including the EPA, to cooperate on the development of the DEIS under NEPA. The Corps released a DEIS for public comment in February 2019; this public comment period closed on July 1, 2019.

In January 2018, EPA announced that it was suspending the withdrawal proceeding and leaving the 2014 Proposed Determination in place at that time pending further action by the Agency.

In June 2019, EPA General Counsel Matthew Z. Leopold, acting pursuant to a delegation of authority from the EPA Administrator, directed Region 10 to resume its consideration whether to withdraw the 2014 Proposed Determination. He also directed the Region to reconsider its previous statement that it would seek additional public comment on the 2014 Proposed Determination, in light of the ample opportunity for public comment previously provided and the public comment opportunity on the DEIS and permit notice.

On July 1, 2019, Region 10 submitted to the Corps two sets of comments, totaling more than 150 pages, regarding the Corps' DEIS and permit notice. The Region also took the first step under the elevation procedures established between the EPA and the Army in a 1992 memorandum to work towards resolving issues EPA identified in the permit notice.

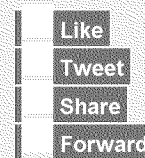
This action removes the Agency's outdated, preemptive proposed veto of the Pebble Mine and restores the well-understood permit review process. EPA Region 10 reached this conclusion based on two primary reasons. First, the Corps' DEIS includes significant project-specific information that was not accounted for in the 2014 Proposed Determination and, based on that information, the Corps has reached preliminary conclusions that in certain respects conflict with preliminary conclusions in the 2014 Proposed Determination. The now-five-year-old Proposed Determination does not grapple with the currently available expansive record, including specific information about the proposed mining project that did not exist in 2014.

Second, other processes are available and better-suited for EPA to resolve issues with the Corps as the record develops; specifically, the well-understood elevation process under CWA section 404(q) and the NEPA process. EPA believes these processes should be exhausted prior to any decision by EPA, based upon all information that has and will be developed, to exercise its section 404(c) authority. A detailed explanation of EPA's decision is available in the notice signed today by EPA's Region 10 Administrator, which will be published in the Federal Register.

<image001.png>



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